

## Attachment to DEQ Guidance Document #GD98-1

### MODEL CONSENT ORDER LANGUAGE:

#### SUPPLEMENTAL ENVIRONMENTAL PROJECTS

1. In partial settlement of the civil penalty for matters included in the NOV, **[owner/operator]** agrees to undertake a Supplemental Environmental Project (SEP) as specifically described in the plan attached hereto as Exhibit A which plan is incorporated by reference into, and enforceable as part of, this Consent Order. The Department has determined the proposed SEP is in accordance with and approvable pursuant to Idaho Code § 39-108(5)(b) **[and/or 39-4414(1)(c)]**. Performance of the SEP will benefit the environment, and it is a project which **[owner/operator]** is not otherwise required to perform. **[Owner/operator]** agrees to implement the SEP in accordance with the detailed plan attached as Exhibit A and the following terms and conditions:
  - A. The total expenditure for the SEP shall not be less than \$\_\_\_\_\_. All costs of the SEP shall be the responsibility of **[owner/operator]**. **[Owner/operator]** certifies that any economic benefit - including tax relief - that **[owner/operator]** will realize as a result of the SEP is detailed in the plan included as Exhibit A. For any SEP which is fully and completely implemented, to the extent that the actual expenditures for the SEP totals less than 90% of \$\_\_\_\_\_, **[owner/operator]** shall pay to the Department as a penalty, within 30 days of submission of the certificate of completion required below, the amount of the shortfall after it has been proportionately adjusted by the amount of any economic benefit realized and reduced by the ratio of penalty mitigation to SEP expenditure, which ratio is \_\_:\_\_. The penalty shall be deposited by the Department into the Hazardous Waste Emergency Account as provided by paragraph \_\_ of this Consent Order.
  - B. The plan included as Exhibit A contains a time frame, including specific dates for the implementation of the SEP. **[Owner/operator]** shall fully implement all aspects of the SEP within that time frame.
  - C. **[Owner/operator]** certifies that **[owner/operator]** is not otherwise required by virtue of any local, state, or federal statute, regulation, rule, order, decree, permit, or other law or agreement, to develop or implement the SEP. **[Owner/operator]** further certifies that **[owner/operator]** has not received, and is not presently negotiating to receive, a credit for the SEP as part of any other enforcement action or any grant from the State, EPA or any other entity.
  - D. In the event **[owner/operator]** fails to fully and completely implement the SEP as provided herein to the reasonable satisfaction of the Department, the Department will provide written notice to **[owner/operator]** of the nature of the deficiency. **[Owner/operator]** shall have thirty (30) days from receipt of the notice to submit documentation that the deficiency has been corrected. In the event the deficiency is not corrected to the satisfaction of the Department, **[owner/operator]** shall be in violation of this Consent Order and shall be required to pay to the Department a stipulated penalty of the amount of penalty mitigation originally allowed as a result of the SEP. The amount of the stipulated penalty may be reduced or waived by the Department if

**[owner/operator]** made good faith and timely efforts to complete the project. Any stipulated penalty payment received shall be deposited by the Department into the Hazardous Waste Emergency Account as provided by paragraph \_\_\_ of this Consent Order. Payment under the terms of this paragraph shall satisfy **[owner/operator]**'s obligation to complete the SEP. **[Owner/operator]** agrees that the Department has sole discretion to make the following determinations: 1) whether the SEP has been satisfactorily completed, 2) whether a timely, good faith effort has been made to implement the SEP, and 3) the amount, if any, to be paid as a stipulated penalty.

- E. **[Owner/operator]** agrees that any public statement, oral or written, making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Idaho Department of Health and Welfare, Division of Environmental Quality for violations of **[citation to law violated]**."
- F. After the effective date of this Consent Order, until completion of implementation of the SEP, **[owner/operator]** shall provide the Department with a progress report every **[fill in time]**. The progress reports shall include a description of the SEP activities **[owner/operator]** performed in the prior **[fill in time]** and a description of the SEP activities **[owner/operator]** expects to perform in the next **[fill in time]**.
- G. No later than ten (10) days after the completion of implementation of the SEP, **[owner/operator]** agrees to provide the Department with a statement certifying that the SEP has been implemented and completed in accordance with the terms and conditions of this Consent Order. The certification shall be accompanied by appropriate documentation (such as invoices, receipts, or tax statement) to verify the amount of the expenditures made and actions taken. It shall be the sole determination of the Department whether **[owner/operator]** has complied with the terms of this Consent Order through implementation and completion of implementation of the SEP as herein required.